

221784



Gabriel S Meyer
Assistant General Attorney

March 5, 2008

Via UPS 2nd Day Air

Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Proceedings

MAR 7 2008

Part of
Public Record

Attention: Victoria Rutson

Re: Proposed Abandonment of the Millard Industrial Lead, from Milepost 19.4 to Milepost 22.85, STB Docket No. AB-33 (Sub-No. 260-X)

Dear Ms. Rutson:

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of Union Pacific Railroad Company's Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. Sections 1105.7 and 1105.8, with a Certificate of Service and a transmittal letter pursuant to 49 C.F.R. Section 1105.11.

Union Pacific anticipates filing a Petition for Exemption in this matter on or after March 27, 2008. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Gabriel S. Meyer".

Gabriel S Meyer

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 260X)

**UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN DOUGLAS AND SARPY COUNTIES, NE
(MILLARD INDUSTRIAL LEAD)**

**ENTERED
Office of Proceedings
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Combined Environmental and Historic Report

(Contains Color Images)

UNION PACIFIC RAILROAD COMPANY

**Gabriel S. Meyer
Assistant General Attorney
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179
(402) 544-1658
(402) 501-3393 FAX**

**Dated March 5, 2008
Filed. March 7, 2008**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 260X)

**UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN DOUGLAS AND SARPY COUNTIES, NE
(MILLARD INDUSTRIAL LEAD)**

Combined Environmental and Historic Report

Union Pacific Railroad Company ("UP") submits this Combined Environmental and Historic Report ("EHR") pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, for an exempt abandonment of a portion of the Millard Industrial Lead, from Milepost 22.85, in Omaha, Nebraska, to Milepost 19.4, in La Vista, Nebraska, a total distance of approximately 3.45 miles in Douglas and Sarpy Counties (the "Line"). The Line traverses U. S. Postal Service Zip Codes 68128 and 68137. UP anticipates that it will file a Petition for Exemption to abandon the Line on or after March 27, 2008.

A map of the Line (**Attachment No. 1**), and UP's letters to federal, state and local government agencies (**Attachment No. 2** and **Attachment No. 3**) are attached to this EHR. Responses received thus far to UP's letters are also attached.

ENVIRONMENTAL REPORT
49 C.F.R. § 1105.7(e)

(1) **Proposed action and alternatives.** Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Response: The proposed action involves an exempt abandonment of a portion of UP's Millard Industrial Lead. The Line proposed for abandonment extends from Milepost 22.85, near L Street in Omaha, Nebraska (Douglas County) to Milepost 19.4, near Giles Road in La Vista, Nebraska (Sarpy County), a total distance of approximately 3.45 miles. A map of the Line is attached as **Attachment No. 1**.

The Line was originally constructed in 1866 by Union Pacific Railroad as part of its transcontinental main line. The Line lost its main line status in 1908, when UP opened the Lane Cutoff (now UP's Omaha Subdivision), which operates to the north of the Line, providing a more direct route through the Omaha area. The Line is constructed primarily with 90-pound rail, installed in 1926 and 1927. The Line also contains a limited quantity of 131 and 133-pound rail.

The Line may be suitable for trail purposes. However, the Line does not appear to be suitable for other public purposes including roads or highways, or other forms of mass transportation, as the Line lies in the cities of Omaha and La Vista, which are served by numerous local streets and highways, including Interstate 80. Nor does the Line appear suitable for energy transmission lines. Portions of the Line may be more suitable for assemblage with adjacent property for industrial, commercial, or other new development.

Based upon information in UP's possession, the Line does not contain any

federally granted right-of-way. Any documentation in UP's possession will be made available to those requesting it.

After the proposed abandonment, the area will continue to be served by the remaining portion of the Millard Industrial Lead, as well as spurs connecting to UP's Omaha Subdivision. The area is also served by BNSF Railway Company, and by numerous major city streets and highways, including Interstate 80, which interchanges with local roads that parallel or cross the Line. Additionally, the greater Omaha region is served by Iowa Interstate Railroad, Ltd., Kansas City Southern Railway Co., Canadian National Railway Co., and Amtrak, and by Interstates 480, 680, and 29. Barge service on the Missouri River is also available.

No traffic currently moves over the Line. Only two customers, Millard Lumber, Inc. and Safety-Kleen Systems, Inc., have moved traffic over the Line within the past two years. Shipping profiles for these customers are as follows¹:

Millard Lumber, Inc.
P.O. Box 45445
Omaha, NE 68145-0445

Millard Lumber last moved traffic over the Line during December, 2007. Since then, Millard Lumber has moved into a new facility in Omaha, located on a different UP line, where it continues to receive service. It is selling its facility located on the Line.

Safety-Kleen Systems Inc.
13915 A Plaza
Omaha, NE 68144

Safety-Kleen had no facilities on the Line, and instead moved traffic via Millard

¹ Because neither customer is losing rail service as a result of the proposed abandonment, it appears unnecessary to supply traffic information to the STB. Moreover, such information could be utilized by competitors of Millard Lumber and Safety-Kleen.

Lumber's facilities, where liquid industrial waste shipments were transloaded from trucks to railcars. Safety-Kleen last moved traffic over the Line shortly before its agreement to utilize Millard Lumber's facility terminated on February 5, 2008. Safety-Kleen is temporarily using trucks to transport its freight, pending acquisition of a transloading location on an alternate UP rail line. UP and Safety-Kleen anticipate that following acquisition of a new transloading site, Safety-Kleen will resume shipment of similar traffic volumes via UP.

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

Response: There will be no effect on regional or local transportation systems and patterns, and no diversion of traffic to other transportation systems or modes

(3) Land Use

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 49 C F R § 1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U S C. § 10905 and explain why.

Response:

(i) UP is unaware of any adverse effects on local and existing land use plans. The Douglas and Sarpy County Commissioner's Offices have been contacted. To date UP has received no response.

(ii) The Natural Resource Conservation Service has been contacted. To date UP has received no response.

(iii) Not Applicable.

(iv) The property over which UP proposes to abandon its easement is not suitable for public purposes such as roads, highways, or other forms of mass transportation, conservation, or energy production or transmission, because there is a fully developed grid of public streets surrounding the right-of-way and no additional streets are needed. The area is also adequately served by public utilities. The Line may, however, be suitable for use as a recreational trail

(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

Response: (i) There are no effects on the transportation of energy resources.

(ii) There are no recyclable commodities moved over the Line .

(iii) There will be no change in energy consumption from the proposed action.

(iv)(A)(B) UP does not anticipate that there will be any rail-to-motor diversion.

(5) Air. (i) If the proposed action will result in either:

(A) an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) an increase in rail yard activity of at least 100% (measured by carload activity), or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. §10901 (or §10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

Response: UP does not anticipate any such effects.

(5) Air. (ii) If the proposed action affects a class 1 or nonattainment area under the Clean Air Act, and will result in either:

(A) an increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line, or

(B) an increase in rail yard activity of at least 20% (measured by carload activity), or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. §10901 (or 49 U.S.C. §10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

Response: There will be no increase in rail traffic, rail yard activity, or truck traffic as a result of the proposed action.

(5) Air. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Response: The proposed action will not affect the transportation of ozone depleting materials.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) an incremental increase in noise levels of three decibels Ldn or more or

(ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area and quantify the noise increase for these receptors if the thresholds are surpassed.

Response: Not applicable.

(7) Safety.

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings)

(ii) If hazardous materials are expected to be transported, identify the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

Response: (i) The proposed action will have no detrimental effects on public health and safety

(ii) The proposed action will not affect the transportation of hazardous materials.

(iii) There are no known hazardous materials waste sites or sites where known hazardous material spills have occurred on or along the subject right-of-way.

(8) Biological resources

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects

Response: (i) The U. S. Fish and Wildlife Service has been contacted. Upon review the U. S. Fish and Wildlife Service concurred that the proposed project will not adversely affect federally listed threatened and endangered species, or their designated critical habitat, and that no further Section 7 consultation with the Service is necessary unless project plans change. The U. S. Fish and Wildlife Service's response is attached as **Attachment No. 4.**

(ii) The National Park Service has been contacted. To date UP has received no response.

(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

Response: (i) The U. S. Environmental Protection Agency Regional Office has been contacted. To date, UP has received no response. The Nebraska Department of Environmental Quality ("DEQ") reviewed the proposed project and had no comments regarding the project that would fall under

the jurisdiction of their programs. The Nebraska DEQ's response is attached as **Attachment No. 5.**

(ii) The U. S. Army Corps of Engineers has been contacted, and determined that there are no flood plains affecting the proposed abandonment. The U. S. Army Corps of Engineers' response is attached as **Attachment No. 6.**

(iii) It is not anticipated that there will be any requirements for Section 402 permits.

(10) Proposed Mitigation Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Response: There are no known adverse environmental impacts.

HISTORIC REPORT
49 C.F.R. § 1105.8(d)

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action:

Response: See Attachment No. 1.

(2) A written description of the right-of-way (including approximate widths to the extent known), and the topography and urban and/or rural characteristics of the surrounding area:

Response: The right-of-way, which is approximately 100 feet wide, runs through the cities of Omaha and La Vista, Nebraska. The properties adjacent to the Line are used for a combination of agricultural, residential, and light industrial activities. Topography is generally level.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area:

Response: The Nebraska Historical Society—State Historic Preservation Office ("SHPO") has been provided with photographs of each of the structures on the property that are 50 years old or older. A copy of the letter to the SHPO and photographs are attached as **Attachment No. 7**. The SHPO determined there will be no historic properties affected by the project. The response of the Nebraska State Historic Preservation Office is attached as **Attachment No. 8**.

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations to the extent such information is known.

Response: See Attachment No. 1 and Attachment No. 7.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

Response: See UP's response to question (1) in the Environmental Report for a brief history and description.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic:

Response: UP does not have any relevant documentation.

(7) An opinion (based on readily available information in the UP's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities):

Response: At this time, UP knows of no historic sites or structures or archeological resources in the project area. The SHPO concluded that no historic properties will be affected by the project. A copy of the SHPO's comments is attached as Attachment No. 8.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

Response: UP does not have any such readily available information.

(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified non-railroad owned properties or groups of properties immediately adjacent to the railroad right-of-way. Photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the locations and type of the site (i.e., prehistoric or native American):

Response: Not applicable.

Dated this 5th day of March, 2008.

Respectfully submitted,



UNION PACIFIC RAILROAD COMPANY
Gabriel S. Meyer, Assistant General Attorney
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179
(402) 544-1658
(402) 501-3393 FAX

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report in Docket No. AB-33 (Sub-No. 260X), the Millard Industrial Lead in Douglas and Sarpy Counties, Nebraska was served by first class mail on the 5th day of March, 2008 on the following:

State Clearinghouse (or alternate):

Nebraska Public Services Commission
1200 N Street, Suite 300
Lincoln, NE 68508

State Environmental Protection Agency:

Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P O Box 98922
Lincoln, NE 68509

**State Coastal Zone Management Agency
(if applicable):**

Not applicable

Head of County (Planning):

Douglas County Commissioners
1819 Farnam Street
County Courthouse
Omaha, NE 68102-0000

Sarpy County Commissioners
1210 Golden Gate Drive
County Courthouse
Papillion, NE 68046-3088

**Environmental Protection Agency
(regional office):**

U S Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

U.S. Fish and Wildlife:

U S Fish & Wildlife Service, Region 6
Assistant Regional Director
Box 25486
Denver Federal Center
Denver, CO 80225

U.S. Army Corps of Engineers:

U S Army Engineer District - Omaha
106 South 15th Street
Omaha, NE 68102

National Park Service:

National Park Service
Midwest Region
601 Riverfront Drive
Omaha, NE 68102

**U.S. Natural Resources Conservation
Service:**

Natural Resource Conservation Service
Rm 152, Federal Building
100 Centennial Mall North
Lincoln, NE 68508

National Geodetic Survey:

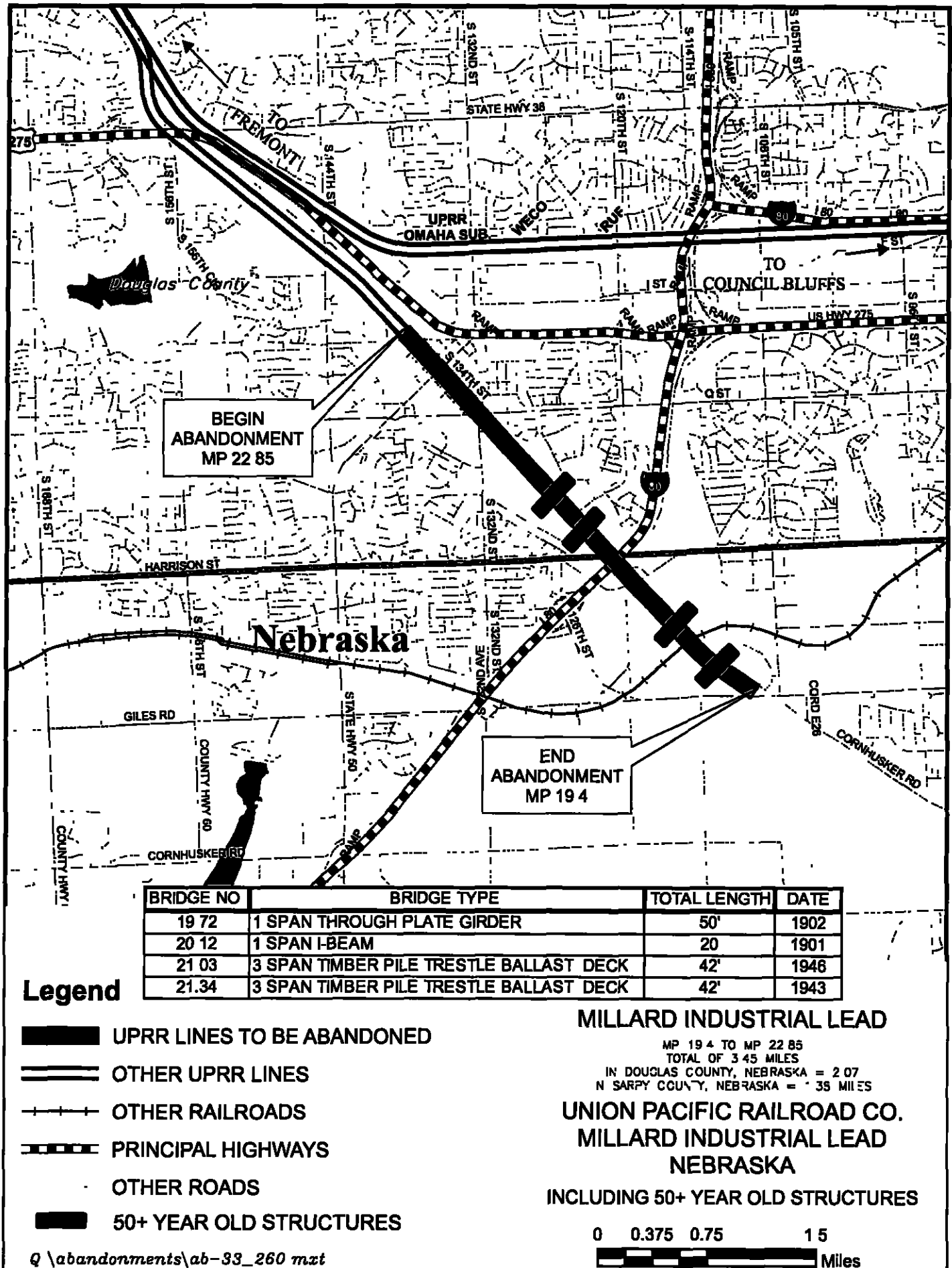
National Geodetic Survey
Edward J McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

State Historic Preservation Office:

Mr Lawrence J Sommer
State Historic Preservation Officer
Nebraska State Historical Society
P O Box 82554
1500 R Street
Lincoln, NE 68501

Dated this 5th day of March, 2008.


Gabriel S. Meyer





Law Department

(402) 501-0127 (FAX)

September 12, 2007

State Clearinghouse (or alternate):

Nebraska Public Services Commission
1200 N Street, Suite 300
Lincoln, NE 68508

U.S. Army Corps of Engineers:

U S Army Engineer District - Omaha
106 South 15th Street
Omaha, NE 68102

State Environmental Protection Agency:

Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P O Box 98922
Lincoln, NE 68509

National Park Service:

National Park Service
Midwest Region
1709 Jackson St
Omaha, NE 68102

**State Coastal Zone Management Agency
(if applicable):**

Not applicable

U.S. Natural Resources Conservation Service:

Natural Resource Conservation Service
Rm 152, Federal Building
100 Centennial Mall North
Lincoln, NE 68508

Head of County (Planning):

Douglas County Commissioners
1819 Farnam Street
County Courthouse
Omaha, NE 68102-0000

National Geodetic Survey:

National Geodetic Survey
Edward J McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

**Environmental Protection Agency
(regional office):**

U S Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

State Historic Preservation Office:

Mr Lawrence J Sommer
State Historic Preservation Officer
Nebraska State Historical Society
P O Box 82554
1500 R Street
Lincoln, NE 68501

U.S. Fish and Wildlife:

U S Fish & Wildlife Service, Region 6
Assistant Regional Director
Box 25486
Denver Federal Center
Denver, CO 80225

Re: Proposed Abandonment of the Millard Industrial Lead from M. P. 22.85 near Millard to the end of the Line at M. P. 19.4, a distance of 3.45 miles in Douglas County, Nebraska; STB Docket No. AB-33 (Sub-No. 260X)

Dear Sirs:

Union Pacific Railroad Company plans to request authority from the Surface Transportation Board (STB) to abandon and discontinue service on the Millard Industrial Lead from M. P. 22.85 near Millard to the end of the Line at M. P. 19.4, a distance of 3.45 miles in Douglas County, Nebraska. A map of the proposed track abandonment shown in black is attached.

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 40 C.F. R. Part 1105.7, this is to again request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental impacts. However, if you identify any adverse environmental impacts, describe any actions that are proposed in order to mitigate the environmental impacts. Please provide us with a written response that can be included in an Environmental Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land

U. S. FISH AND WILDLIFE SERVICE (And State Game And Parks Commission, If Addressed) State (1) whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects, and, (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

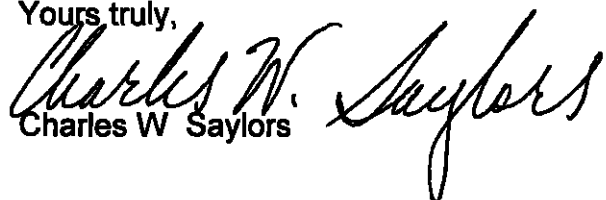
STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or Local water quality standards Describe any inconsistencies.

U. S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and (2) whether any designated wetlands or 100-year flood plains will be affected. Describe the effects

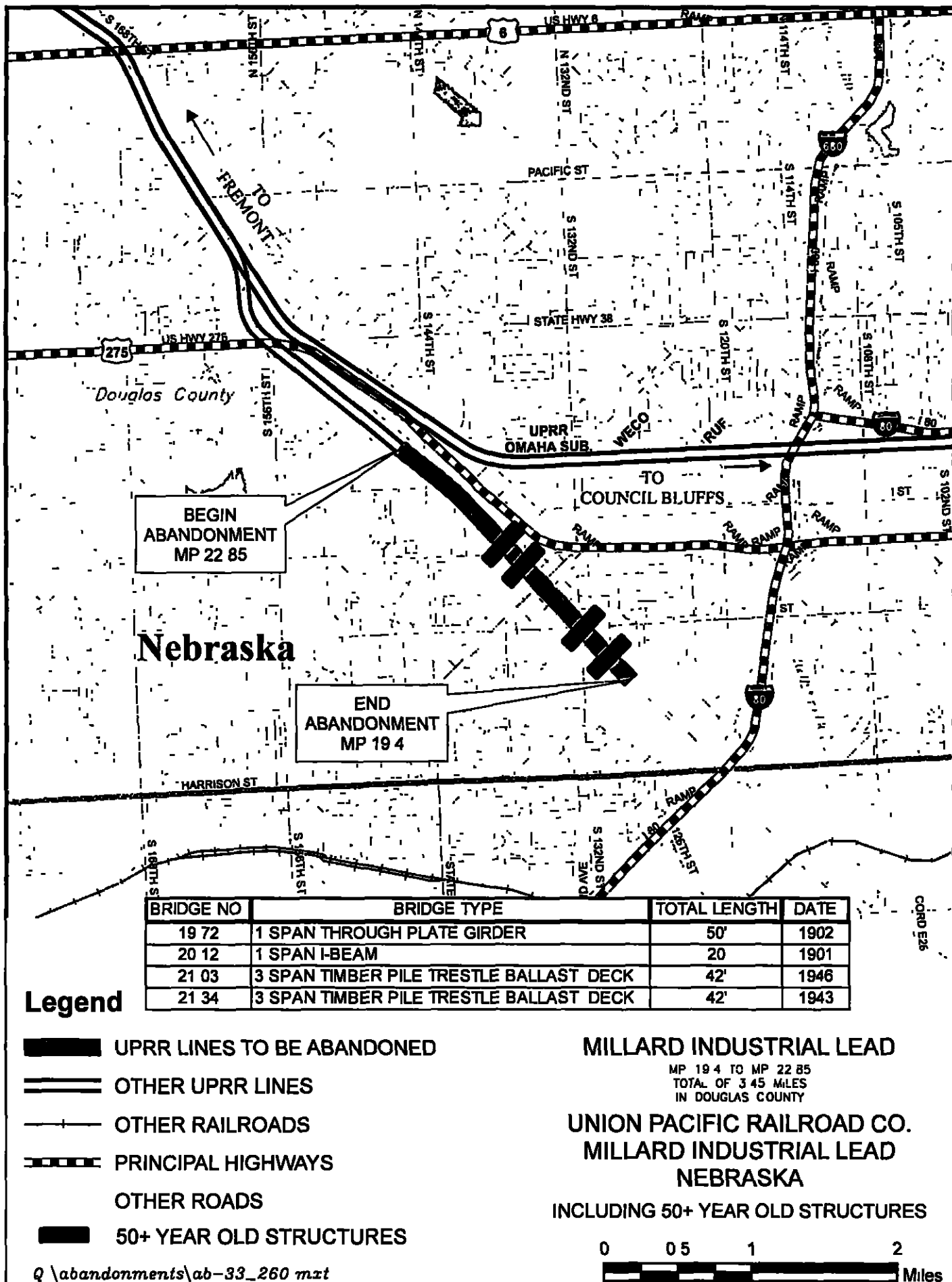
U. S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL PROTECTION (OR EQUIVALENT AGENCY) (1) Identify any potential effects on the surrounding area, (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action

Thank you for your assistance. Please send your reply to Union Pacific Railroad, Mr. Chuck Saylor, 1400 Douglas Street, Mail Stop 1580, Omaha, NE, 68179 If you need further information, please contact me at (402) 544-4861.

Yours truly,


Charles W Saylor

Attachment





(402) 501-0127 (FAX)

January 10, 2008

State Clearinghouse (or alternate):

Nebraska Public Services Commission
1200 N Street, Suite 300
Lincoln, NE 68508

State Environmental Protection Agency:

Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P O Box 98922
Lincoln, NE 68509

State Coastal Zone Management Agency

(If applicable):

Not applicable

Head of County (Planning):

Douglas County Commissioners
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County Courthouse
Omaha, NE 68102-0000

Sarpy County Commissioners

1210 Golden Gate Drive
County Courthouse
Papillion, NE 68046-3088

Environmental Protection Agency

(regional office):

U S Environmental Protection Agency
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901 North 5th Street
Kansas City, KS 66101

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Box 25486
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State Historic Preservation Officer
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P O. Box 82554
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Re: Proposed Abandonment of the Millard Industrial Lead from M. P. 22.85 near Millard to the end of the Line at M. P. 19.4, a distance of 3.45 miles in Douglas County, Nebraska, STB Docket No. AB-33 (Sub-No 260X)

Law Department

UNION PACIFIC CORPORATION
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
fx (402) 501-0125

020

Dear Sirs

On September 12, 2007 Union Pacific Railroad Company notified you of its plan to request authority from the Surface Transportation Board (STB) to abandon and discontinue service on the Millard Industrial Lead from M. P. 22.85 near Millard to the end of the Line at M. P. 19.4, a distance of 3.45 miles in Douglas County, Nebraska. Although the stated railroad mileposts for the proposed abandonment are correct, it has come to our attention that the map attached to the letter was incorrect and that, in fact, 1.38 miles of the 3.45 mile proposed abandonment are in Sarpy County, Nebraska. Accordingly, Sarpy County officials have been added to those addressed in this letter. We will consider any responses to the September 12, 2007 letter final unless you send a revised response. A corrected map of the proposed abandonment shown in black is attached.

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 40 C.F.R. Part 1105.7, this is to again request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental impacts. However, if you identify any adverse environmental impacts, describe any actions that are proposed in order to mitigate the environmental impacts. Please provide us with a written response that can be included in an Environmental Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

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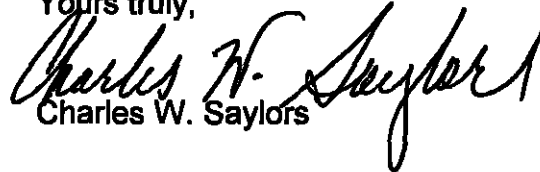
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U. S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL PROTECTION (OR EQUIVALENT AGENCY). (1) Identify any potential effects on the surrounding area, (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials.

involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

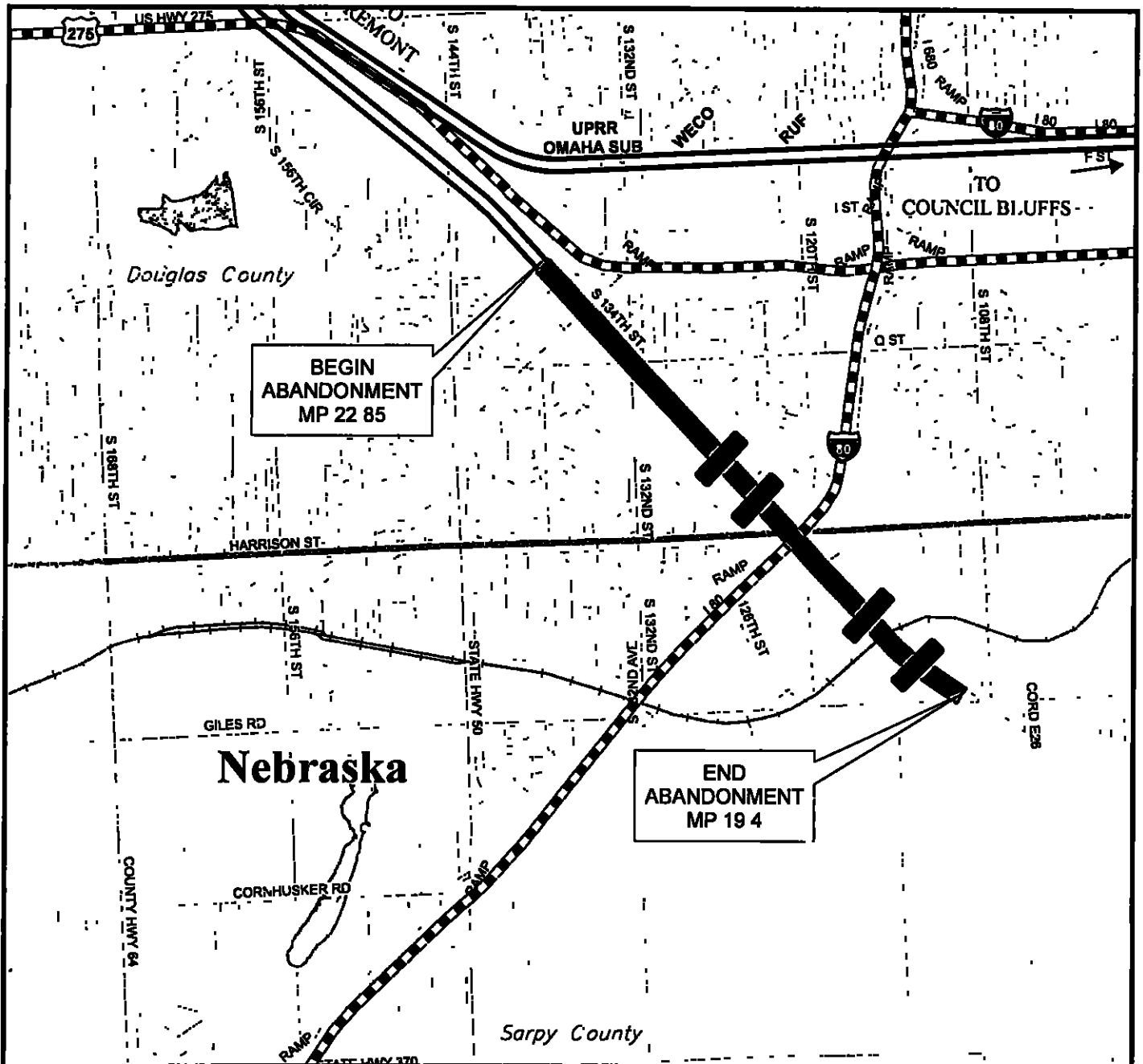
Thank you for your assistance. Please send your reply to Union Pacific Railroad, Mr. Chuck Saylor, 1400 Douglas Street, Mail Stop 1580, Omaha, NE, 68179. If you need further information, please contact me at (402) 544-4861.

Yours truly,

A handwritten signature in black ink, appearing to read "Charles W. Saylor". The signature is fluid and cursive, with a large, stylized "S" at the end.

Charles W. Saylor

Attachment



BRIDGE NO	BRIDGE TYPE	TOTAL LENGTH	DATE
19 72	1 SPAN THROUGH PLATE GIRDER	50'	1902
20.12	1 SPAN I-BEAM	20	1901
21 03	3 SPAN TIMBER PILE TRESTLE BALLAST DECK	42'	1946
21 34	3 SPAN TIMBER PILE TRESTLE BALLAST DECK	42'	1943

Legend

- abandonment.csv Events
- OTHER UPRR LINES
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS
- 50+ YEAR OLD STRUCTURES

Q \abandonments\ab-33_260.mxt

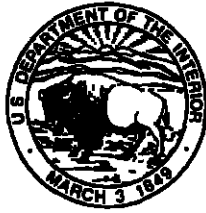
MILLARD INDUSTRIAL LEAD

MP 19.4 TO MP 22.85
TOTAL OF 3.45 MILES
IN DOUGLAS COUNTY, NEBRASKA = 2.07
IN SARPY COUNTY, NEBRASKA = 1.38 MILES

UNION PACIFIC RAILROAD CO. MILLARD INDUSTRIAL LEAD NEBRASKA

INCLUDING 50+ YEAR OLD STRUCTURES

0 0.375 0.75 1.5
Miles



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

October 1, 2007

FWS-NE: 2008-101

Charles W. Saylor
Union Pacific Railroad
1400 Douglas Street STOP 1580
Omaha, Nebraska 68179-1580

RE: Union Pacific Railroad Millard Industrial Lead Abandonment Project, Douglas County, Nebraska

Dear Mr. Saylor:

This responds to your September 12, 2007, request for comments and concurrence from the U.S. Fish and Wildlife Service (Service) regarding the subject project. The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office deals with are the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), Fish and Wildlife Coordination Act (FWCA) (488 Stat. 401; 16 U.S.C. 661 *et seq.*), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 688-688d, as amended), and Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712, as amended). Compliance with all of these statutes and regulations are required for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347). In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote the conservation of fish and wildlife resources for the benefit of the American public.

Please note that the Service's position on a project under the authorities of ESA, BGEPA, MBTA, and NEPA cannot be assumed without our official written response. Pursuant to the "take" provisions under section 9 of ESA; 16 U.S.C. 688 (a and b) of BGEPA; and 16 U.S.C. 703 of MBTA, the project proponent is responsible for compliance with these federal laws regardless of whether the Service is able to respond within your requested time frame.

Endangered Species Act (ESA)

Section 9 of ESA prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of ESA defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Our regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined as an

024

intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. The ESA provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultation for projects with federal involvement pursuant to section 7 or through the issuance of an incidental take permit under section 10(a)(1)(B) of ESA.

Based on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that any of the federally listed species identified on our web site (<http://mountain-prairie.fws.gov/endsp/CountyLists/NEBRASKA.htm>) would occur in the vicinity of the proposed project. We concur that the proposed project will not adversely affect federally listed threatened and endangered species, or their designated critical habitat. No further section 7 consultation with the Service is necessary unless project plans change or new information becomes available.

Bald and Golden Eagle Protection Act (BGEPA)

The BGEPA provides for the protection of the bald (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) by prohibition, except under certain specific conditions, the taking, possession, and commercial use of such birds. Based on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that either the bald or golden eagle would be affected by the proposed project.

Migratory Bird Treaty Act (MBTA)

Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, stream, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period of April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. The Service further recommends that field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) until such time as construction on the proposed project has been completed.

The Service requests that the following be provided to this office prior to construction proceeding at the proposed project site if the above conditions occur. The purpose of the request is to assist the project proponent to avoid the unnecessary take of migratory birds and the possible need for law enforcement action:

- a) A copy of any survey(s) for migratory birds done in conjunction with this proposed project, if any. The survey should provide detail in regards to survey methods, date and time of survey, species observed/heard, and location of species observed relative to the proposed project site.
- b) Written description of any avoidance measures implemented at the proposed project site to avoid the take of migratory birds.
- c) Written description of any circumstances where it has been determined by the project proponent that one or more active bird nests cannot be avoided by the planned construction activities.

Fish and Wildlife Coordination Act (FWCA)

The FWCA requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of federal and federally funded, permitted, or licensed water resource developments. The comments in this letter are provided as technical assistance and predevelopment consultation and do not constitute a Service report under the authority of FWCA on any required federal environmental review or permit.

Wetlands, Streams, and Riparian Habitats

If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Corps of Engineers may be needed. The Service recommends that impacts to wetlands, streams, and riparian areas be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 2:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that stream pattern, profile, and dimension be mitigated at a ratio of no less than 1:1 (stream length and number, pattern, and length of meanders created/restored versus stream length and number, pattern, and length of meanders impacted; sequence and number of pools and riffles created/restored versus sequence and number of pools and riffles impacted). Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaces for acres of riparian habitat impacted). The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.

National Wildlife Refuges

In Nebraska, the Service manages six refuges and one wetland management district under the National Wildlife Refuge System. Based on the information provided, the Service has determined that the proposed project does not appear to impact any of these seven wildlife areas.

Due to budget deficits and reduced staffing in our office, it has become necessary for us to modify the manner in which we respond to formal requests (i.e., received in the mail via the U.S. Postal Service) for information or concurrences regarding the effects of proposed projects on federal trust fish and wildlife resources. If you cannot submit such request to our office electronically, but must send it to us in the form of a letter, please include a return E-

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mail address in your letter so that we can provide an electronic response to it. Unless requested otherwise due to special circumstances, we no longer intend to reply on paper, but only through electronic means in order to reduce our costs for postage, mail handling, and clerical support. In the future, if you are requesting information or concurrence from the Service regarding a proposed project; please submit your request electronically to my attention at the following E-mail address: John_Cochnar@fws.gov. In addition, Mr. Steve Anschutz of this office has retired. Please address future correspondence to my attention. Your cooperation and understanding regarding this matter is greatly appreciated.

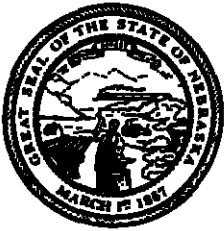
The Service appreciates the opportunity to review and comment on the referenced project proposal. If you have any questions regarding these comments, please contact me at the above E-mail address or telephone number (308)382-6468, extension 20.

Sincerely,



John Cochnar
Assistant Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Kristal Stoner)
NGPC; Lincoln, NE (Attn: Carey Grell)



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder
Director
Suite 400, The Atrium
1200 'N' Street
PO Box 98922
Lincoln, Nebraska 68509 8922
Phone (402) 471 2186
FAX (402) 471-2909
website www.deq.state.ne.us

January 18, 2008

Charles Saylor
Union Pacific Railroad
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179

RE: Proposed Abandonment of the Millard Industrial Lead from M.P. 22.85 Near Milford
to the End of the Line at M.P. 19.4

Dear Mr. Saylor:

The Nebraska Department of Environmental Quality (NDEQ) has reviewed the above referenced project. We have no comments regarding this project that would fall under the jurisdiction of our programs.

If you have questions about the permitting process, or any other questions, feel free to contact me at (402) 471-8697.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Stirts".

Hugh Stirts, PhD
NEPA Coordinator



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
106 SOUTH 15TH STREET
OMAHA NE 68102-1618

Attachment No. 6

January 18, 2008

Planning, Programs, and Project Management Division

Mr. Chuck Saylor
Union Pacific Railroad
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179

Dear Mr. Saylor:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated January 10, 2008 regarding the proposed Abandonment and Discontinued Services of the Millard Industrial Lead from M.P. 22 85 near Millard to the end of the Line at M.P. 19.4. The Corps offers the following comments:

There are no flood plain comments regarding the above mentioned project, however your plans should be coordinated with the U.S. Environmental Protection Agency, which is currently involved in a program to protect ground water resources. If you have not already done so, it is recommended you consult with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission regarding fish and wildlife resources. In addition, the Nebraska State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project area.

If construction activities involve any work in waters of the United States, a Section 404 permit may be required. For a detailed review of permit requirements, preliminary and final project plans should be sent to:

U.S. Army Corps of Engineers
Wehrspann Regulatory Office
Attention: CENWO-OD-R-NE/Moeschen
8901 South 154th Street
Omaha, Nebraska 68138-3621

If you have any questions, please contact Mr. Dave Crane of my staff at (402) 221-4882

Sincerely,

Larry D. Janis, Chief
Environmental, Economics, and
Cultural Resources Section
Planning Branch



Law Department

September 12, 2007

Mr. Lawrence J. Sommer
 State Historic Preservation Officer
 Nebraska State Historical Society
 P. O. Box 82554
 1500 R. Street
 Lincoln, NE 68501

Re. Proposed Abandonment of the Millard Industrial Lead from M. P. 22.85 near Millard to the end of the Line at M. P. 19.4, a distance of 3.45 miles in Douglas County, Nebraska; STB Docket No. AB-33 (Sub-No. 260X)

Dear Sir,

Enclosed for your review are eight photographs of the bridges located on the Millard Industrial Lead which are over 50 years old. The bridges are described as follows:

<u>Milepost</u>	<u>Description</u>	<u>Length</u>	<u>Year Constructed</u>
19.72	1 Span Through Plate Girder (TPG)	50'	1902
20.12	1 Span I-Beam	20'	1901
21.03	3 Span Rail Timber Pile Trestle Ballast Deck (TPTBD)	42'	1946
21.34	3 Span Rail Timber Pile Trestle Ballast Deck (TPTBD)	42'	1943

A map of the proposed abandonment and discontinuance is also enclosed for your reference.

Please advise if you believe there is historical significance to any of the bridges. Thank you for your assistance.

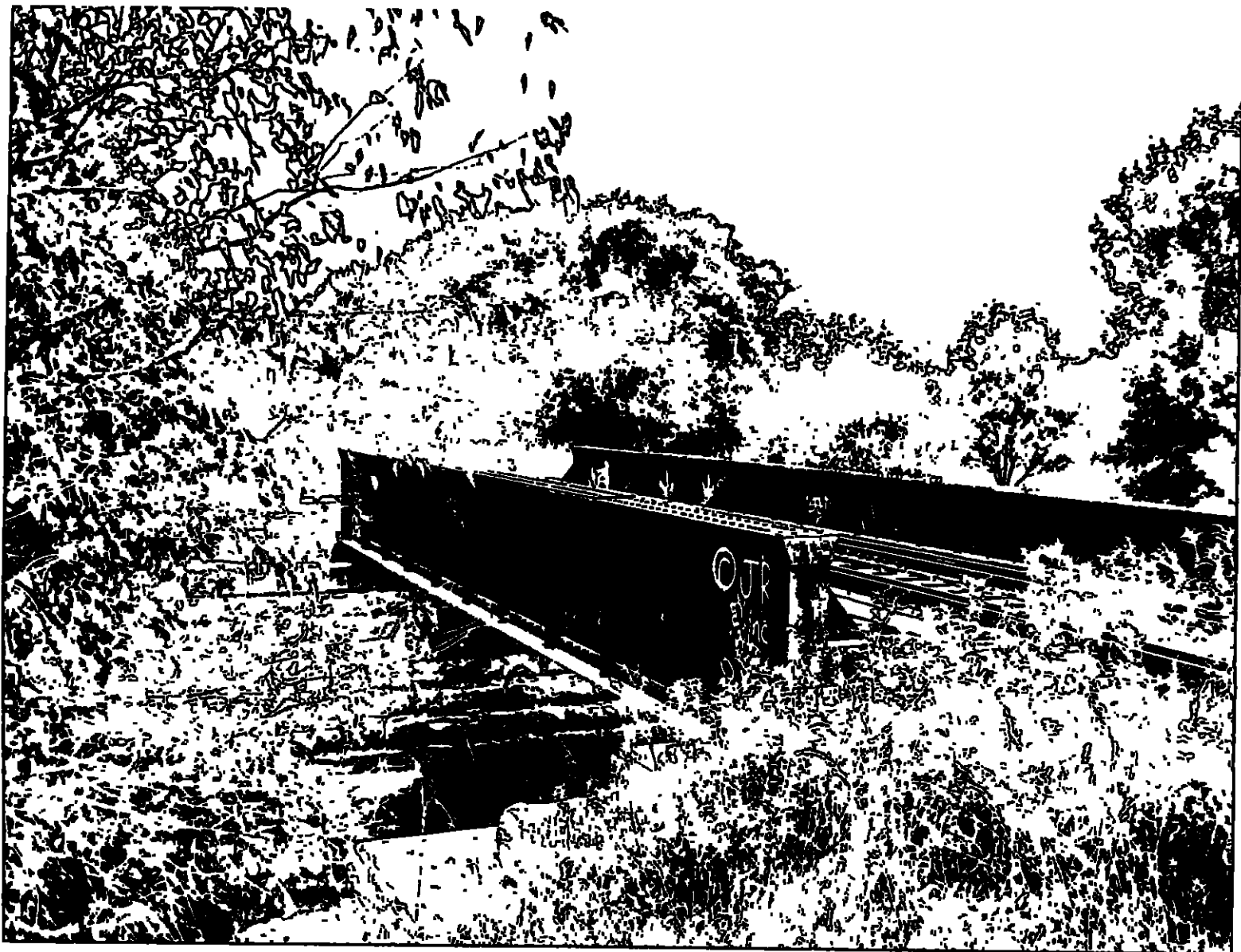
Sincerely,

Charles W. Saylor
 Charles W. Saylor
 (402) 544-4861

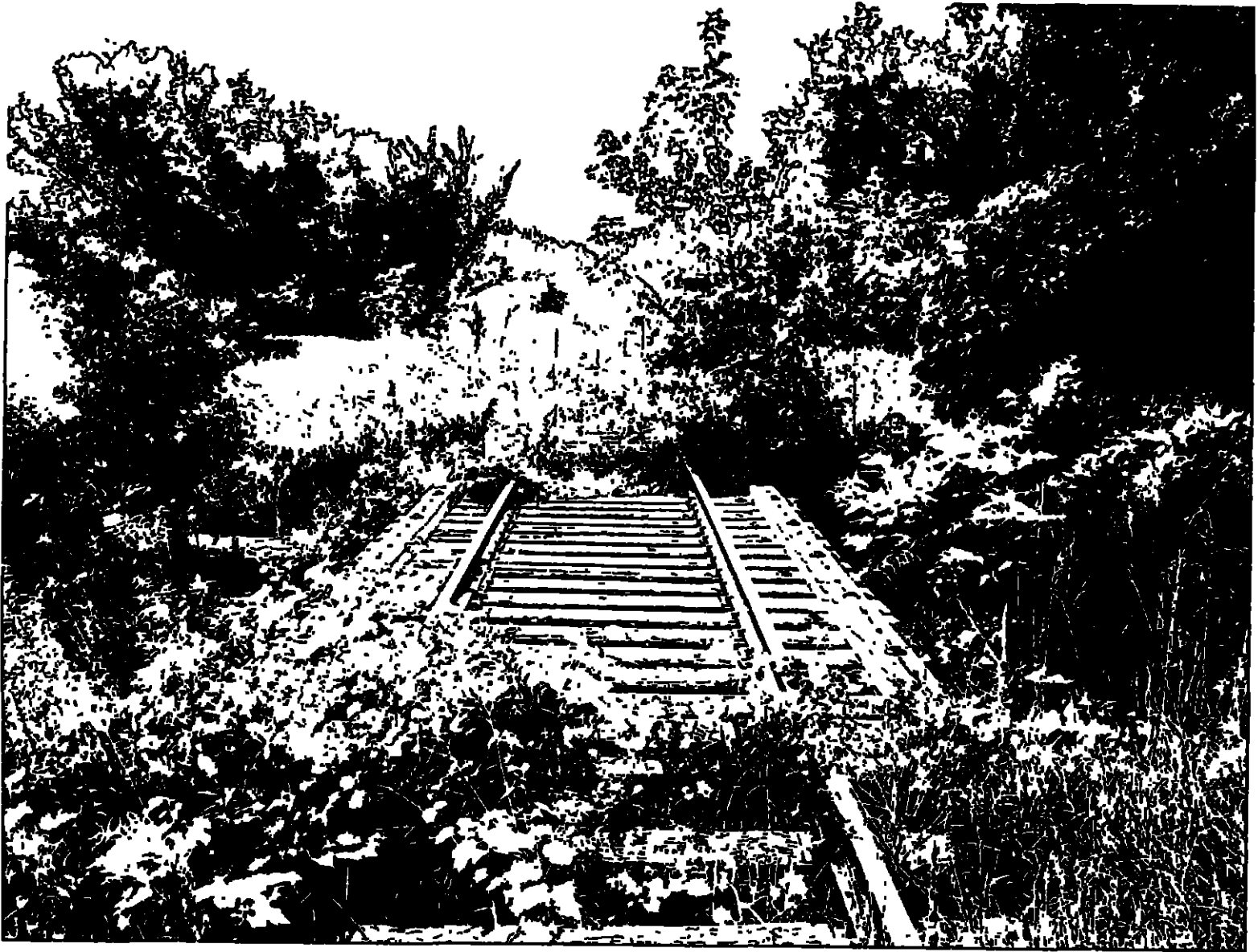
Attachments



MP 19.72



MP 19.72



HP 20.12



MP 20.12



MP 21.03



MP 21.03

036



MP 21.34

037



MP 21.34



NEBRASKA STATE HISTORICAL SOCIETY

1500 R STREET, P.O. BOX 82554, LINCOLN, NE 68501-2554
(402) 471-3270 Fax (402) 471-3100 1-800-833-6747 www.nebraskahistory.org

Michael J. Smith, Director/CEO

October 17, 2007

Mr Charles W Saylor
Union Pacific Railroad
1400 Douglas St
STOP 1580
Omaha NE 68179-1580

RE. HP#0709-054-01
Proposed abandonment of portions of Millard Industrial Lead

Dear Mr Saylor,

Thank you for submitting information regarding the above referenced project proposal for our review and comment. Our comment on this project and its potential to affect historic properties is required by Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations 36 CFR Part 800

Given the additional information provided, in our opinion there will be no historic properties affected by the projects as proposed. Therefore, in accordance with 36 CFR 800.4(d)(1), you may proceed with the projects as planned.

Should any changes in the project be made, or in the type of funding or assistance provided through federal or state agencies, please notify this office of the changes before further project planning continues.

Please retain this correspondence and your documented finding in order to show compliance with Section 106 of the National Historic Preservation act, as amended. If you have any questions, please do not hesitate to call Stacy Stupka-Burda at 402-471-4770.

Sincerely,

L. Robert Puschendorf
Deputy State Historic Preservation Officer
Nebraska State Historic Preservation Office

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